

Senate Study Bill 1220 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act concerning the liability of private employers, general
2 contractors, and premises owners for negligently hiring
3 or failing to supervise employees, agents, or independent
4 contractors convicted of a public offense.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 671A.1 Limitation on liability for
2 negligently hiring or failing to supervise an employee, agent, or
3 independent contractor convicted of a public offense.

4 1. A cause of action shall not be brought against a private
5 employer, general contractor, or premises owner solely for
6 negligently hiring or failing to adequately supervise an
7 employee, agent, or independent contractor, based on evidence
8 that the employee, agent, or independent contractor has been
9 convicted of a public offense as defined in section 701.2.

10 2. This chapter does not create a cause of action, expand
11 an existing cause of action, or apply to the cause of action of
12 negligent retention.

13 3. This chapter does not apply to employment of prisoners
14 at prisons.

15 4. This chapter does not alter any statutory provision
16 allowing an employer to conduct a criminal history background
17 investigation or consider criminal history records in the
18 employment process for particular types of employment.

19 Sec. 2. NEW SECTION. 671A.2 Liability protection not
20 applicable.

21 1. This chapter does not preclude a cause of action for
22 negligent hiring by or the failure of a private employer,
23 general contractor, or premises owner to provide adequate
24 supervision of an employee, agent, or independent contractor,
25 based on evidence that the employee, agent, or independent
26 contractor has been convicted of a public offense as defined in
27 section 701.2, if all of the following criteria are met:

28 a. The private employer, general contractor, or premises
29 owner knew or should have known of the conviction.

30 b. The employee, agent, or independent contractor was
31 convicted of any of the following:

32 (1) A public offense that was committed while performing
33 acts substantially similar to those reasonably expected to
34 be performed in the employment or under the relationship or
35 contract, or under conditions substantially similar to those

1 reasonably expected to be encountered in the employment or
2 under the relationship or contract, taking into consideration
3 all of the following factors:

4 (a) The nature and seriousness of the public offense.

5 (b) The relationship of the public offense to the ability,
6 capacity, or fitness required to perform the duties and
7 discharge the responsibilities of the employment or the
8 relationship or contract.

9 (c) The extent and nature of the employee, agent, or
10 independent contractor's past criminal activity.

11 (d) The age of the employee, agent, or independent
12 contractor when the public offense was committed.

13 (e) The amount of time that has elapsed since the employee,
14 agent, or independent contractor's last criminal activity.

15 (f) The conduct and work activity of an employee, agent, or
16 independent contractor before and after the criminal activity.

17 (g) Evidence of the employee, agent, or independent
18 contractor's rehabilitation or rehabilitative effort while
19 incarcerated or after release.

20 (h) Other evidence of the employee, agent, or independent
21 contractor's fitness, including letters of recommendation from
22 any of the following:

23 (i) Prosecutors, law enforcement, or correctional officers
24 who prosecuted, arrested, or had custodial responsibility for
25 the employee, agent, or independent contractor.

26 (ii) The sheriff or chief of police in the community where
27 the employee, agent, or independent contractor resides.

28 (iii) Any other person in contact with the convicted
29 employee, agent, or independent contractor.

30 (2) A sexually violent offense as defined in section 229A.2.

31 (3) The offense of murder in the first degree under section
32 707.2.

33 (4) The offense of murder in the second degree under section
34 707.3.

35 (5) The offense of kidnapping in the first degree under

1 section 710.2.

2 (6) The offense of robbery in the first degree under section
3 711.2.

4 (7) An offense committed on certain real property for which
5 an enhanced penalty was received under section 124.401A or
6 124.401B.

7 (8) A felony offense where the employee, agent, or
8 independent contractor used or exhibited a dangerous weapon as
9 defined in section 702.7 during the commission of or during
10 immediate flight from the scene of the felony offense, or
11 where the employee, agent, or independent contractor used or
12 exhibited the dangerous weapon or was a party to the felony
13 offense and knew that a dangerous weapon would be used or
14 exhibited.

15 2. The protections provided to a private employer, general
16 contractor, or premises owner under this chapter do not apply
17 in a suit concerning the misuse of funds or property of a
18 person other than the employer, general contractor, or premises
19 owner, by an employee, agent, or independent contractor if, on
20 the date the employee, agent, or independent contractor was
21 hired, the employee, agent, or independent contractor had been
22 convicted of a public offense that included fraud or the misuse
23 of funds or property as an element of the public offense, and
24 it was foreseeable that the position for which the employee,
25 agent, or independent contractor was hired would involve
26 discharging a fiduciary responsibility in the management of
27 funds or property.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with
30 the explanation's substance by the members of the general assembly.

31 This bill relates to the following causes of actions:
32 negligent hiring and failure to adequately supervise. The bill
33 does not expand or create any causes of action or apply to the
34 cause of action of negligent retention.

35 Under current law, the torts of negligent hiring and

1 supervision allow a person injured by an employee to sue the
2 employee's employer even though the act was committed outside
3 the scope of the employment due to some fault resting with the
4 employer for hiring the employee, or failing to supervise the
5 employee.

6 The bill provides that the causes of action of negligent
7 hiring and negligent supervision shall not be brought against a
8 private employer, general contractor, or premises owner solely
9 based on evidence that the employee, agent, or independent
10 contractor has been convicted of a public offense. However,
11 the bill does not preclude causes of action for negligent
12 hiring or negligent supervision of an employee, agent, or
13 independent contractor, if two criteria are met. First, the
14 private employer, general contractor, or premises owner knew or
15 should have known of the conviction; and second, the employee,
16 agent, or independent contractor was convicted of a public
17 offense enumerated in the bill or a public offense that was
18 committed while performing duties substantially similar to
19 those reasonably expected to be performed in the employment,
20 or under the relationship or contract, or under conditions
21 substantially similar to those reasonably expected to be
22 encountered in the employment or the relationship or contract,
23 taking into consideration enumerated factors set forth in the
24 bill.

25 The bill provides that the protections provided to a private
26 employer, general contractor, or premises owner do not apply
27 in a suit concerning the misuse of funds or property of a
28 person other than the employer, general contractor, or premises
29 owner, by an employee, agent, or independent contractor if, on
30 the date the employee, agent, or independent contractor was
31 hired, the employee, agent, or independent contractor had been
32 convicted of a public offense that included fraud or the misuse
33 of funds or property as an element of the public offense, and
34 it was foreseeable that the position for which the employee,
35 agent, or independent contractor was hired would involve

1 discharging a fiduciary responsibility in the management of
2 funds or property.

3 The bill does not apply to the employment of prisoners at
4 prisons.

5 The bill does not alter any statutory provision allowing an
6 employer to conduct a criminal history background investigation
7 or consider criminal history records in the employment process
8 for particular types of employment.